

***THE HON'BLE DR.JUSTICE B.SIVA SANKARA RAO**
AND
THE HONBLE MS. JUSTTICE J.UMA DEVI

+CRIMINAL APPEAL NO.488 OF 2011.

%23-12-2017

Udayagiri Subbarayudu
@ Venkataiah @ Akkulaiah

appellant/accused ...

Vs.

\$ State of A.P. through S.H.O.
Railway Kodur Circle, Kadapa
District, rep. by Public Prosecutor

....Respondents

!Counsel for the appellant/accused: M.Bhagyamma

^Counsel for the Respondent : Public Prosecutor

<Gist :

>Head Note:

? Cases referred:

- 1.AIR 1960 SC 1125
2. (2007) 3 SCC 1(DB)
3. (2017) (2) ALD (Cr1 837(SC) (DB)
4. AIR 1981 -SC-1241
5. 2003 -SCC -(Cr1)-2033
6. 1999-SCC (Cr1)-376
7. (2007 1-SCC (Cr1)-155
8. (2006) 2 SCC (Cr1) 115
9. 2003 SCC (Cr1) 1965
10. (2008) 1 SCC (Cr1) 109
11. (2008) SCC (Cr1) 264

**THE HON'BLE DR.JUSTICE B.SIVA SANKARA RAO
AND
THE HONBLE MS. JUSTTICE J.UMA DEVI**

CRIMINAL APPEAL NO.488 OF 2011

JUDGMENT: (Per the Hon'ble Dr.SSRB,J)

This Criminal Appeal is filed by the sole accused, Udayagiri Subbarayudu @ Vekataiah @ Akkulaiah, s/o Akkulaiah, native of Pedduru S.T. Colony, Chitvel Mandal, now residing at C.Vaddepalli, S.T. Colony, Chitvel Mandal of YSR Kadapa District, against the conviction judgment of the learned III Additional District and Sessions Judge (F.T.C.), Kadapa at Rajampet, dated 03.01.2011, in Sessions Case No.78 of 2010, under Sections 364, 376 (2) (f) and 302 IPC, with sentence of imprisonment for life for the offence under Section 364 IPC, imprisonment for life for the offence under Section 376 (2) (f) IPC and imprisonment for life for the offence under Section 302 IPC and for each of the three offences, additionally fine of Rs.5,000/- each with default sentence of six months for each and all these sentences shall run concurrently and by giving set off of the period undergone.

2. The said Sessions Case is an outcome of Cr.No.57 of 2009 of Chitvel Police Station, dated 16.06.2009, originally registered for the offences punishable under Sections 376 and 302 I.P.C. from the report of the father of

one Sravani (hereinafter referred to as 'the deceased') by name Rapuri Srinivasulu-P.W.1, under Ex.P1 covered by Ex.P15-express F.I.R. and the police after investigation filed final report by inclusion of the offence under Section 364 IPC also and from which, the learned Magistrate allotted P.R.C.No.2 of 2010 and committed the case to the Court of Sessions where the Sessions Division allotted S.C.No.78 of 2010 and made over to the learned Sessions Judge supra for trial according to law after hearing and from framing of charges, if any.

3. The learned Sessions Judge in the pre-trial, hearing of parties, framed three charges, for the offences under Sections 364, 376 (2) (f) and 302 IPC on 28.05.2010, after hearing the prosecution and the accused through Legal Aid counsel engaged for him and when questioned, the accused pleaded not guilty on the charges levelled against him and there from put to trial. In the course of trial, on behalf of the prosecution, P.Ws. 1 to 14 are examined and Exs.P1 to P20 and M.O.1 are marked. Accused did not adduce any separate defence evidence nor any contradictions marked from the evidence of any of the prosecution. It is from said evidence, the trial Court found the accused guilty and convicted and sentenced as supra. Impugning said conviction judgment and sentence of

imprisonment passed by the trial Court as unsustainable, the present appeal is filed.

4. The contentions in the grounds of appeal of the accused impugning the trial Court's conviction judgment and sentence passed are that the trial Court grossly erred in non consideration of the fact that there is a delay in giving report, that even assuming that P.W.1 found the dead body on the date of the so-called murder by committing rape after alleged abduction, for having buried and not chosen to give report till the next day at about 10.00 to 10.30 A.M., even allegedly found the dead body on the previous day in the afternoon having buried the dead body, that otherwise the case is totally rested on circumstantial evidence and there is no iota of any circumstantial evidence linking the chain so as to conclude that but for the accused none else committed the offence and in the absence of which, the conviction judgment with sentence passed by the trial Court is unsuatainable. The trial Court failed to consider the material omissions in the deposition of witnesses including P.W.1 and his conduct and version is also not of an prudent person and the trial Court die not properly appreciate the evidence and his conviction is based on surmises and without proving the offence beyond all reasonable doubt, leave apart the accused is entitled to be acquitted atleast by extending benefit of

doubt. It is also the contention that the so-called extra judicial confession is introduced with a view to falsely implicate the accused, having failed to found or to save real culprit who is within the knowledge of P.W.4 and other witnesses and thereby the accused is entitled to be acquitted by setting aside the trial Court's conviction judgment and sentence. The learned counsel for the appellant-accused reiterated the same.

5. Whereas, the learned Public Prosecutor contended that the trial Court's judgment is a reasoned one and the trial Court appreciated the evidence in coming to a right conclusion and the case is not rested on circumstantial evidence alone as there is an extra judicial confession of the accused proved by the evidence of P.Ws. 8 and 9 apart from that of the Investigating Officer, there is further a disclosure made by the accused leading to discovery of facts and mere fact that there is no semen and spermatozoa or blood stains on the so called lungi of the accused, which was seized under a cover of Ex.P13-panchanama for his disclosure only as was wearing at the alleged time of occurrence is no way fatal to the case of the prosecution. The prosecution proved its case against the accused beyond all reasonable doubt and there is nothing to lend any benefit of doubt and nothing even to interfere with the conviction judgment passed and

sentence awarded by the trial Court from the gravity of offences and heinousness of the crime and the appeal deserves dismissal.

6. Heard both sides and perused the material on record and provisions of law and the propositions drawn attention.

7. In deciding the appeal on legality and correctness of the trial Court's conviction judgment and sentence of imprisonment coming to factual matrix of the case in setting the law into motion by the Ex.P1 statement of P.W.1 in registration of Ex.P15-F.I.R. in Crime No.57 of 2009, dated 16.06.2009 at 10.00 A.M. supra, it reads that he is a resident of C.Vaddepalli S.T. colony, Chitvel Mandal and he is an S.T. and he is residing for the past 3 years along with his wife and the deceased at the shed in the field of one Subbarayudu of Kadapa, that on the previous day i.e., on 15.06.2009 at about 6.00 A.M., himself, his wife-Radhamma went for coolly work by leaving their daughter-Sravani 'deceased' at their residential shed and after completion of work, when they reached home at about 11.00 A.M. they found the deceased was not there at house and there from they went in search of the deceased at near by houses and having not found they went from there and searched even in the forest and in their search, they found at about a furlong away and in between the trees in the forest, the jeans pant

and shirt of their deceased daughter Sravani, of which buttons of shirt were removed and jeans pant was torn to some extent and there from they searched and found the dead body of the deceased nearby facing sky and from the private parts, blood oozing and they brought the dead body to their residence and informed about the same to their relatives and they being uneducated, buried the dead body by dug a pit. While so, the persons of the village on the date of report on 16.06.2009 morning asked him to inform the police and thereby he came to the police station and gave statement that his daughter was raped and killed by throttling by somebody, hence to take action against the persons who committed the offence and his statement was reduced to writing, according to his say and was read over, which is correct, which is Ex.P1. It is there from, having registered the crime supra covered by Ex.P15-F.I.R. by P.W.12-S.I.of Police, investigation was taken up by Rasool Saheb-P.W.14-Inspector of Police according to their evidence. There is no cross-examination worth in the evidence of P.W.12-S.I. of Police who registered the crime covered by Ex.P1 statement in issuing Ex.P15-F.I.R., but for to the extent P.W.1 did not state about the assailant of the occurrence is the accused in his Ex.P1-statement. The other suggestion denied by him is to P.W.1's coming to the Police Station and giving of statement and reduced it there into

writing under Ex.P1 is not correct. P.W.14-Rasool Saheb, Inspector of Police deposed about he received information of the crime registered and came to Police Station collected the copy of F.I.R. at about 10.45 A.M., from P.W.12-S.I., of Police and took up investigation and in the course of investigation, he sent requisition and secured the M.R.O. Chitvel-P.W.10-P.Kanakadurgaiah for exhumation of the dead body of Sravani and proceeded with the M.R.O. to the scene of offence, which is the forest area of C.Vaddepalli, near S.T. colony, the place where the dead body buried and exhumated the dead body by engaging one Kotaiah and P.W.3-Chirajeevi. P.W.3-Chiranjeevi, also deposed about he and his brother Kotaiah exhumed the dead body of the deceased Sravani and there were no clothes on the body of the deceased at the time of exhumation, and that P.W.1 and his wife present, who among others informed there that the deceased was taken away to the forest, committed rape on her and murdered her by the accused. In his cross-examination P.W.3 stated that he has no personal knowledge about the incident and he heard about the incident through others as stated by him and he came to the place for exhumation of dead body on the request of P.W.1 and Police and M.R.O. not examined him regarding the offence. He denied the suggestion of he is deposing falsehood.

8. Coming to the evidence of P.W.10-M.R.O. he deposed that he is the Deputy Tahsildar-cum-charge Tahsildar and on the requisition of police on 16.06.2009 to attend for conducting inquest on the body of deceased Sravani already buried to be exhumed, he went to C.Vaddepalli, S.T. colony forest area by about 11.30 A.M. or so, which is one furlong away to the residence of the family of the deceased and identified scene of offence, where found blood stains on earth and stone and police seized the same covered by the scene of offence panchanama and Ex.P20-sketch and went to the place where dead body was buried, which is at about 100 meters away from the residence of the deceased family and P.W.3- Chiranjeevi and Kotaiah dig the pit and exhumed the dead body of the deceased, which is with no clothes and appears aged about 9 years and there were traces of oozing blood from the nose and mouth and found blood stains at the private parts of the deceased and also traces of bluish marks at the neck and both thighs of the deceased and conducted Ex.P5 inquest in the presence of P.W.8-V.R.O. Subbarayudu and Panchayat Secretary Janaki Ramachandran and village servant Subramanyam. The M.R.O. also deposed that he examined and recorded the statements of persons present viz., P.W.1-Ex.P2, P.W.6-Shanti-Ex.P3, P.W.2-Varalakshmi-Ex.P10. The said P.W.2 is the eldest daughter of P.W.1, one Radhamma covered by

Ex.P8, one Vasanthamma covered by Ex.P9, and one Lakshmamma @ Lakshmi covered by Ex.P11. The M.R.O. also deposed about the opinion formed by the inquestdars of the deceased was raped and murdered by throttling her. He also deposed and so also by P.W.14 that the dead body was shifted to Government Hospital, Rajampet for post-mortem examination. In the cross-examination of M.R.O. by the accused, he deposed that P.W.1 in his statement under Ex.P2 did not state about Lakshmi informed about the incident to him. He is suspecting that particular person named by him about the commission of offence and thereby the inquest report mentions the suspicion in forming the opinion by the inquestdars. In the inquest they suspected the assailant as Udayagiri Venkataiah only on assumptions. He denied the suggestion of nothing happened as deposed by him and he is accommodating the police.

9. From this, coming to the evidence of P.W.11- Dr.S.V.Lakshmi-the Civil Assistant Surgeon, who conducted post-mortem examination on the body of the deceased covered by Ex.P12, dated 17.06.2009, that on 16.06.2009 at about 5.15 P.M., she conducted autopsy over the dead body of Rapuri Sravani, daughter of P.W.1-R.Srinivasulu along with another Civil Assistant Surgeon- A.Ananda Babu, based on the requisition of the Tahsildar-P.W.10 in Cr.No.57of

2009 of Chitvel P.S. and found rigour mortis absent, face is swollen, eyes protruded and bulged out, blood serious discharge coming from both nostrils, bluish discolouration of face and also at anterior part of chest and both upper arms present. Periorbital hemorrhage are present over both the conjunctiva, Peeling of skin present here and there all over body. The external injuries noticed and deposited are (1) laceration of size 3 x 2 x 1 cm present over right side of labia majora on the posterior aspect with oozing of blood serious discharge. Coming to the internal examination, skull opened and found meninges are intact, brain is congested on cut section, neck when opened found the trachea and oesophagus and other muscles are bluish and congested. Lungs are congested. Liver and spleen are congested. Vaginal swabs preserved were sent to F.S.L. Hyderabad for analysis, Hyoid bone preserved sent for Forensic examination. The opinion formed by her from the P.M. examination was that, death was due to cardio respiratory failure due to asphyxia, due to smothering, taken place between 24 to 36 hours prior to post-mortem examination. Ex.P12 is the post-mortem examination report with reference to the Forensic Medical Department opinion of the hyoid bone intact under Ex.P13. The hospital received F.S.L. report of Hyderabad on 22.12.2009. However, the said report not pertaining to the sample of the vaginal swab sent by her to the F.S.L. In the

cross-examination, the P.W.11 deposed that the requisition of the Tahsildar through constable received and the P.M. examination is conducted. The identification marks on the body of the deceased are not visible thereby not noted. The black moles will not disappear on the death of a human being and denied the suggestion that no post-mortem examination was conducted and Ex.P12 was prepared to show as if conducted. She further deposed that on 23.09.2009, the F.S.L. Hyderabad, report Ex.P14 received by J.F.C.M., Railway Kodur pertaining to the vaginal swabs sent by her to F.S.L. shows human semen and spermatozoa are detected on the cotton swabs.

10. From the above evidence, it is clear that semen and spermatozoa found from the cotton swab as per Ex.P14 report sent to the F.S.L. and there, P.W.11 has referred in the P.M. report-Ex.P12 that they collected semen on the body of the deceased at the time of P.M. examination and that also establishes that the deceased was raped and murdered by smothering. The death was due to asphyxia and that hyoid bone is in tact, but not by strangulation.

11. Coupled with this evidence, coming to the evidence of P.W.1, who set the law into motion being the father of the deceased, his evidence referring to F.I.R. no way requires repetition. What he further deposed is that after the

death of the deceased, the accused was not found and he is in abscondance for three months, but his wife and children are residing in the colony. He deposed that though he is an illiterate, he knows signing and in the statement covered by Ex.P1, he put his thumb impression and also signature. In the cross-examination by the accused, he deposed that in Ex.P1, he did not state the name of the culprit, who committed the rape and murder of the deceased. What is further elicited is that, in his report, he stated that after returning to shed from the work, they went to forest in search of the deceased. He denied the suggestion of he was tutored by the police. He deposed that the people of Vaddepalli used to pass through the path way leads to Pullampet running from Chitvel to forest, which is proceeding in front of his lemon garden and denied the suggestion of as on the date of the alleged offence, the accused was residing at Venkatagiri by doing coolly work. It is elicited from his cross-examination that the husband of Subbamma is also Subbarayudu, but the accused Subbarayudu is having alias name as Akkulaiah. He denied the suggestion of husband of Sumathi is not the accused. He volunteers that the accused got alias name Subbarayudu @ Venkataiah @ Akkulaiah. Though it is as if an omission asked to the Investigating Officer, what is once elicited in the cross-examination of the prosecution witnesses by the

accused, that cannot be considered as omission or contradiction for what is proposed to be asked by the accused during trial, prosecution witnesses need not state by anticipation to the Investigating Officer during their examination in investigation. There is no material worth the accused in his favour brought by said cross-examination of P.W.1. The identity of the accused with the names called as Subbarayuydu @ Venkataiah @ Akkulaiah, s/o Akkulaiah, also brought from evidence of P.W.1 and thereby what is mentioned in the inquest report about Udayagiri Subbarayuydu is even clarified from the other material on record showing with alias name also. Coming to the further cross-examination of P.W.1, he denied the suggestion of nobody stated to him of his daughter was taken towards forest. He denied the suggestion of his daughter was having many friends and he volunteered that his daughter has no many friends though she was not playing lonely. He also denied the suggestion of the accused was not present in their colony and his daughter was not taken away by the accused to forest. He stated before the M.R.O. that he has suspicion against the accused. He denied the suggestion of the accused did not commit any offence and he is deposing falsehood. So far as other question put him as to why he did not take his daughter to the hospital, he stated that as the deceased was already dead, he did not choose to take her

to any hospital. There is also explanation in the F.I.R. regarding the delay in his giving report about the occurrence being an illiterate father of the deceased of the S.T. colony, near forest area. There is nothing to show from this delay that there is every strong possibility of embellishment and introducing of any false version by implicating him for saving any other person from any animosity from the cross-examination at length.

12. Coming to the other evidence of P.W.2-Varalakshmi, she is no other than the daughter of P.W.1 and sister of the deceased. She deposed that on the date of death of her sister, she was at her in-laws house. On that day morning, her in-laws and her husband went to coolly work. Herself and her co-sister Santhi (P.W.6) were at her house. She further deposed that at about 3.00 P.M., her mother came to her and enquired her about the whereabouts of the deceased. She informed that the deceased did not come to her house. Then herself and others went in search of the deceased and during search, L.W.6-Lakshamma informed her that, the accused has taken her sister Sravani along with him towards forest by stating that he will get honey for her. Subsequently, they found the dead body of Sravani in the forest at some distance from the shed and at that time, there were no clothes on the dead body of Sravani.

They noticed blood coming from the private parts of her sister. She further deposed that the dead body was buried by her parents on that day and that the accused did not return to colony and subsequently also, he did not return to the colony and that no body saw accused later at their colony. This evidence of P.W.2 is also corroborating the version of P.W.1. In the cross-examination, P.W.2 deposed by denying the suggestion of she does not know anything about the facts and is deposing falsehood or her father foisted a false case against the accused since the accused did not oblige her father. She deposed that the accused used to work in other villages in most of the times and denied the suggestion of the case is foisted against the accused falsely. The evidence of Santhi-P.W.6, co-sister of P.W.2, is also referred in the evidence of P.W.2 supra that the accused is having two names as Subbarayudu @ Akkulaiah. Herself, her parents-in-law, her husband and brother-in-law leave the house for attending coolly work in the morning and on the date of the death of Sravani, her parents-in-law, her husband and her brother-in-law left the house during morning time and since she is having small children, she used to stay in the house. P.W.1 is living in a shed in the lemon garden, which is situated at a distance of one furlong away from her house. On the date of death of Sravani at about 9.00 A.M., she saw the accused proceeding

towards said lemon garden, in which the shed of P.W.1 is situated. On that day at about 12 noon her parents-in-law, her husband and her brother-in-law returned home. P.W.1 and his wife also used to return their house after attending work by about 12 noon. On that day at about 1.00 P.M., P.W.1 and his wife came to her house in search of their daughter Sravani and she informed them that Sravani did not come to her house on that day from the morning. Then P.W.1 and his wife left the house in search of their daughter. Her mother-in-law Vasanthamma also went in search of Sravani. On that day at about 3.00 PM, the dead body of the Sravani was found at a distance of one furlong from the shed of P.W.1 and she also went and saw the dead body and found that there were no clothes on the dead body. The clothes of Sravani were stated to be on the plants nearby. By that time, the blood was oozing from the private parts of the dead body. Later, parents of Sravani buried the dead body of Sravani in their garden. From that day onwards, the accused was not present in the village. Police examined her. In the cross-examination, she deposed that the distance between the shed of P.W.1 and her house is two furlongs. The house of P.W.1 is not visible from her house. On that day from morning to afternoon, she was at her house. She deposed that Lakshmi is not residing in their colony since two years i.e., since subsequent to date of death of Sravani.

In the cross-examination, she deposed that she expressed suspicion against the accused before the M.R.O. Coming to the omission that the accused has two names Subbarayauau @ Akkulaiah as referred supra and it is already elicited in the cross-examination of P.Ws. 1 and 2 by the accused and thereby, it cannot be considered still a material omission to doubt the identity of the accused.

13. From this evidence, it clearly established that the deceased was raped and murdered by some body and the other circumstances from the evidence of P.W.6 are that on that day on 17.06.2009 when Sravani died, she was seen at about 9.00 A.M., The evidence of P.W.6 also speaks about she noticed the accused proceeding towards the house of P.W.1 and the deceased. Coming to the evidence of P.W.4, she deposed that the accused is her husband. P.W.1 is her brother by courtesy and they also used to attend coolly work. Sravani, daughter of P.W.1 died. On that day, herself, her sisters, P.W.1, his wife and others went to attend agricultural coolly works and at about 12 noon, they returned to colony after attending coolly work and by that time, Sravani was not present at the residential shed of P.W.1. P.W.1 and his wife began in search for Sravani. Subsequently, after 3.00 P.M., the dead body of Sravani was traced in the forest at a distance of one kilometer away from

the shed of P.W.1 on its southern direction. On learning about the same, she also went there and found the dead body of Sravani and there were no clothes on the dead body and her clothes were nearby to that dead body. Later on same day the dead body of Sravani was buried. On the next day, the dead body was exhumated from the pit by Kotaiah and P.W.3. The accused was not present in the village on that day and on the previous day since he was in the habit of leaving for months together and she did not enquire him. This aspect of his chief examination to the extent of accused was not present in the village on that day and on the previous day is in favour of the accused no doubt. She being the wife of the accused, got privilege not to depose against the husband, however waived the same by coming to the witness box. In her cross-examination she denied the suggestion of she is deposing falsehood at the tutoring of somebody. She deposed that her husband's name is Narasimhulu. She denied the suggestion of she has no connection with the accused and never lived with him much less as husband. She deposed that wife of the accused is one Subbamma and she does not know her whereabouts. She denied the suggestion of she was not examined by police and M.R.O.

14. From this evidence the fact that the body of the deceased was lying open to sky without clothes and clothes

of the deceased are nearby to the dead body is corroborated by the other evidence of P.W.4 with evidence of P.Ws.1,2 and 6 supra.. Now, coming to the complicity of the accused with regard to commission of offence, the crucial witnesses are P.Ws. 5 and 7 to 9 besides P.W.6 also a circumstantial witness. P.W.5 is one Vallepu Subbarayudu an agriculturist of C.Vaddepalli, deposed that he knows P.W.1 and his daughter Sravani, aged about 10 years, who died one year ago. On that fateful day, he sent some coolies to get firewood from the forest and he also followed them for some distance in the forest. While returning back to home at about 9.00 A.M., for the purpose of bringing meals to the coolies, he saw the accused taking with him P.W.1's daughter by name Sravani, aged about 10 years towards forest. He deposed that he saw the accused and the girl at a distance of four barras from the hut previously belongs to one Lathemachine Subbaiah Naidu and now occupied by some one. On that day at about 3.00 P.M., he heard about the daughter of P.W.1 died in the forest and on that evening he went to the hut of P.W.1 and found the dead body of Sravani kept there. Yanadi community people were present there. In the cross-examination, he deposed that the path way leading to the forest up to foot of the hillock from Chitvel and Pullampet road and near the hut of Lathemachine Subbaiah Naidu only, there is a road and the persons used

to take cattle and persons used to pass to collect firewood through that path way and adjacent to that shed of Subbaiah Naidu. By that time, the girl and the accused were talking together and after observing them near the hut, he went towards the house later. He did not observe them on the next day of the death of the deceased. Police examined him and he denied the suggestion of he does not know anything about the accused or he is deposing falsehood. There is no specific suggestion by the accused that himself and deceased girl were not proceeding towards the forest on that day at about 9.00 A.M., or so. Once the statement of the witness not tested by cross-examination in this regard much less disputed and that too the statement that he is returning from forest towards the house so as to bring meals to the workers engaged by him and found the accused and the deceased proceedings in the forest in opposite direction to him, with a clear possibility of identification, there is nothing to disbelieve for nothing to suggest any strong motive for him to speak against accused with no truth. Coming to the evidence of P.W.7-P.Ravi, he deposed that he knows the accused Venkataiah and they used to attend coolly work, that he came to know the name of the accused only from the information by the accused and not otherwise. About one year ago, in the morning at about 6.00 or 6.30 A.M. he was engaged by P.W.5 for cutting dry trees in the

forest for firewood, which forest is about 1 K.M. away from C.Vaddepalli, to which village, P.W.5 belongs and they cut firewood near the field of one Derangula Venkata Subbaiah, that when himself and P.W.5 were proceeding in search of firewood, they found the accused proceeding towards the forest along with a girl, aged about 11 years or so and he does not know the identity of the girl at that time and on that day evening at about 5.00 P.M on hearing that a girl of S.T. colony of C.Vaddepalli was murdered in the forest after committing rape on her by somebody, he went along with others to the house of the parents of the victim situated in the mango garden near the village and found the dead body of that girl and identified the said girl as the girl that was proceeding along with the accused on the morning towards forest when they were moving in search of the firewood. He was examined by police and also by the M.R.O. In the cross-examination he deposed that he knows P.W.1 since one and years ago and they used to meet in attending the coolly works. P.W.5 is an agriculturist. Himself and P.W.1 used to attend coolly work. The place in which they were cutting the trees in the forest, for which, one has to obtain permission from the Department and on that day there was no permission obtained. He denied the suggestion of for accused refused to come along with him for cutting trees illegally in the forest, they bore grudge against him and

foisted this case falsely against him. There is no suggestion disputing the factum of the accused and the deceased proceeding towards forest on that morning. Thereby this evidence of P.W.7 also corroborates the evidence of P.W.5 coupled with the evidence of P.W.6 supra in categorically establishing that on that day at about 9.00 A.M., the accused was seen by P.W.6 proceeding towards the house of the deceased and on that day from the house of the deceased towards the forest, P.Ws. 5 and 7 saw the accused taking the deceased with him and it is in the forest the deceased was raped and killed. When such is the case, there is consistency and corroboration in the evidence of these witnesses. Even P.W.4 deposed as if the accused is out of village on the previous day and on that day, it falsifies her evidence and that she cannot be believed from the above, besides she is the wife of the accused and interested to save him from the case from said facts under appreciation of the evidence as part of duty of the Court to separate grain from chaff in appreciation of evidence and it clearly establishes linking the chain including last seen the deceased in the company of accused when proceeding towards the forest where the dead body found and proved as raped and murdered and the accused also from there in abscondance from evidence of above witnesses discussed supra and in this regard there is no any explanation of the accused,

including with reference to the fact within his personal knowledge under Section 106 of the Evidence Act with regard to how the deceased was raped and murdered but for by him and such an inference also can be drawn under Section 114 of the Evidence Act against the accused in the facts and circumstances. Leave it as it is of above circumstantial evidence is clearly bringing home the guilt of the accused said evidence discussed supra, there is other evidence on record which is the extra judicial confession of the accused to P.W.8-K.Subbarayudu, V.R.O. of C.Kandulavaripalli village.

15. Coming to the scope of law on confession, Article 20 (3) of the Constitution is based on the maxim Nemotenetur Prodere accusarecipsum to mean no man is bound to accuse himself and if at all the accused is not bound to disclose any fact from said protection, if a man refuses answer or disclose any fact within his exclusive knowledge as per Section 114 illustration (h) of the Evidence Act, adverse inference can be drawn against him that if such disclosure made by him. Irrespective of no one can accused himself, once that privilege is waived and any confession is made voluntarily, based on the principle that no man can falsely accuse himself, that confession is not only relevant and admissible, but also got its own credibility for the court

to consider as part of appreciation of evidence from said disclosure of the facts which are within his exclusive knowledge accusing him. No doubt, from the very wording of Section 24 of the Evidence Act with negative phraseology; a confession appears to the Court as caused by inducement, threat or promise is irrelevant in a criminal proceeding with reference to the charge against the maker, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. However, the fact remains from the very wording of Sections 28 and 29 of the Evidence Act, that a confession made after removal of impression caused by inducement, threat or promise is relevant and a confession otherwise relevant not to become irrelevant because of promise of secrecy etc., Therefore, Section 24 is to be read with Sections 28 and 29 of the Evidence Act and not in isolation. On the scope of law, leave about other grounds also raised in relation to the constitutional validity of Section 27 of the Evidence Act upheld by the Constitution Bench of the apex Court way back in the **STATE OF U.P. V DEOMAN UPADHYAYA**¹ and subsequently dealt with law in relation to scope of provisions

¹ AIR 1960 SC 1125

under Section 24 to 30 of the Evidence Act and particularly, 24, 28 and 29 apart from 27 as an exception to 25.

16. From this coming to relevancy and admissibility and the value of extra judicial confession, extra-judicial confession even made to a stranger can be considered if it is found to have been truthful and voluntarily made before a person who has no reason to state falsely as held in **Ram Singh Vs. Sonia**². Same is also reiterated in **Satish and another etc.,Vs.State of Haryana**³. It is also the position of law laid down in **Prahlad Vs., State**⁴. As such, where the extra judicial confession is shown voluntarily made by the accused and the witnesses no way inimical or interested to falsely implicate and there are no any other circumstances to doubt credibility of the witness; it can even be a sole basis and no way a corroborative piece or a weak piece of evidence.

17. In another referred expression of the Apex Court reported in **Nazir Khan Vs., State of Delhi**⁵, it was held that a free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the highest sense of guilt”, and to that conclusion also placed reliance on **Ramkhilari Vs., State of Rajasthan**⁶, **Namala Subba Rao Vs., State of A.P.**⁷; and also relied upon **Kulwinder Singh**

² (2007) 3 SCC 1(DB)

³ (2017) (2) ALD (CrI 837(SC) (DB)

⁴ AIR 1981 -SC-1241

⁵ 2003 -SC-(CrI)-2033

⁶ 1999-SC (CrI)-376

⁷ (2007 1-SC (CrI)-155

Vs., State of Punjab⁸ – wherein it was laid down that, the evidentiary value of an extra judicial confession must be judged in the fact situation obtaining in each case. It would depend not only on the nature of the circumstances, but also the time when the confession had been made and the credibility of the witness, who testifies thereto.

18. In fact in **State of Rajasthan Vs., Raja Ram⁹**, it was held as follows:

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

⁸ (2006) 2-SOC (CrI)-115

⁹ 2003 SOC (CrI) 1965

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

19. The Apex Court also referred the above in its later decision in **Gagan Kanojia Vs., State of Punjab**¹⁰ supporting the proposition in holding that extra judicial confession, as well known, can form the basis of a conviction. By way of abundant caution, however, the court may look for some corroboration. Extra judicial confession cannot ipso facto be termed to be tainted.

20. The Apex Court in **Aloke Nath Dutta Vs., State of West Bengal**¹¹ referring to the expressions above held that though extra judicial confession need not contain reproduction of exact words in the so-called extra judicial confession, the maker took the entire blame on himself without implicating others and for no circumstance brought out doubting the extra judicial confession including by the cross-examination of the prosecution witnesses, from that extra judicial confession, it proves the involvement of the accused in the crime beyond reasonable doubt to solely act upon since voluntary and in the form of natural response. From reading of this decision, it clearly proves from Paras 64 to 74 that even an extra judicial confession can be taken as a sole basis as against the maker if it is voluntary and acceptable.

¹⁰ (2008) 1 -SCC (Cri) 109

¹¹ (2008)- SCC (Cri)-264

21. From the above, more particularly from the expression of the apex Court in *Aloke Nath Dutta*, an extra judicial confession made voluntarily true and made by a person in fit state of mind and even to stranger as per decisions supra, is not only admissible but also a well basis to convict the accused. The settled law from the above expressions of the Apex Court is that an extra Judicial confession even can form a sole basis for conviction even in a case totally rested upon circumstantial evidence.

22. Coming to the evidence of P.W.8, who is the V.R.O. C.Kandulagvaripalli village, he deposed that on 27.09.2009 at panchayat office of C.Kandulavaripalli at about 10.00 A.M., the accused came to his office and prior to that he does not know him and he can identify him who is present in the court hall and the accused made a confession that he committed rape on a girl aged 9 or 10 years and killed her in the forest near K.K.Vaddepalli ST colony about 3 months prior to that date and requested him to help to surrender before the police and he prepared a report based on the said confession and took the accused along with report and handed over to police, Chitvel P.S., which is covered by Ex.P14 report. Immediately thereafter, police examined him and he was also present at the inquest when the dead body was brought by police. Three months prior to Ex.P4, he is one of the panchayatdars covered by Ex.P5. In

the cross-examination of this witness by the accused, he denied the suggestion that C.Vaddepalli is not within the limits of his office. He deposed that he does not know about the facts pertaining to this case prior to 27.09.,2009 and again saying that he knows the facts of the case even prior to that confession made. He deposed that the distance between C.Vaddepalli and K.K.Vaddepalli is about 2 K.Ms or so and the offence not taken place within the limits of C.Vaddepalli, but within the limits of K.K.Vaddepalli. Name of the wife of the accused is Subbamma, but the said Subbamma is the first wife of the accused and his present wife name is Sumathi-P.W.4. This witness now clarified with regard to the wives of the accused. In the cross-examination of this witness by the accused he denied the suggestion of the accused is having only one wife and he is deposing falsehood. He denied the suggestion of the accused never came to him much less made any disclosure as contained to the so called confession in Ex.P4. He deposed that he cannot give the date on which the police examined him. He deposed that he did not obtain any permission from M.R.O. to take the accused to police station on the date he appeared and confessed, but orally he informed the M.R.O. He denied the suggestion of to help P.W.1, Ex.P4 is falsely prepared at the instance of police and the accused never confessed. It is a confession running in 3 pages. There are no signatures of

the maker or the witness who reduced it into writing at pages 1 and 2 but at the last page. Generally, the signatures will be underneath the document. However, he categorically stated that after completion of scribing of the document only, notice of the contents will be given to anybody and the endorsements to be made there under. He deposed that left hand thumb impression on Ex.P4 is only at the 3rd page of the document. The accused admits the thumb impression. He did not even explain as to how his thumb impression came into on said extra judicial confession made to P.W.8, but for there is truth of what P.W.8 deposed of the contents in Ex.P4. The law is settled including from the above expressions that the witness to whom extra judicial confession made by any accused no longer required in actual words but for indicating the gist. Even from the cross-examination of P.W.8 in relation to the extra judicial confession made by the accused, there is nothing to doubt the credibility of the witness and nothing to doubt the truth of said extra judicial confession.

23. Coupled with the above, coming to the discovery of facts from disclosure made by accused to the Investigating Officer-P.W.13-Inspector-Krishnaiah in the presence of witnesses including P.W.9-B.Gundalreddy, retired V.R.O. they deposed that in their presence the accused made

confession about the commission of crime and it is covered by admissible portion of disclosure panchanama Ex.P6, dated 27.09.2009 at 3.30 PM. The accused led them to Yanadi colony, C.Vaddepalli and entered into his house and brought one black cover where he kept his lungi and police seized the same. As per Ex.P7 panchanama. He can identify said lungi M.O.1 with the black cover. In the cross-examination P.Ws.9 and 13 denied the suggestions of the Ex.P6 and P7 are created. P.W.9 deposed that in Ex.P7, it was not specifically noted as to at which place of the lungi it was torn. P.W.13 also deposed about seizure of the lungi along with black cover and the same was also noted in Ex.P7. They denied the suggestion of M.O.1 was not produced by accused or they are deposing falsehood. Here one important aspect to be kept in mind also from the expression of the apex Court in *Deoman Upadhyaya* supra is that a fact disclosed by accused which ultimately leads to discovery of the said fact as an exception of Section 25 by 27 of the Evidence Act as admissible and relevant. Even the lungi sent to FSL and report received, there is no semen and spermatozoa found, it does not belie the prosecution case of what accused disclosed and shown of the lungu that was seized and any non finding of semen and spermatozoa on said lungi no way belies the prosecution of the evidence of accused has committed the offence and the contra thereby is

unsustainable. From said facts on record with reference to the law supra, when the prosecution evidence on the extra judicial confession itself is a basis and the other circumstantial evidence also clinchingly establishes the guilt of the accused, that itself establishes that the accused alone and none else that kidnapped the deceased having taken on the pretext to secure honey at forest in making to come with a bowl and committed rape on her and killed her brutally by smothering.

24. Having regard to the above, there is nothing to interfere with the trial Court's conviction judgment and also the sentence of imprisonment with fine imposed for said offences and the appeal is therefore, liable to be dismissed.

25. Accordingly and in the result, the Criminal Appeal is dismissed confirming the judgment, dated 03.01.2011 in S.C.No.78 of 2010 on the file of the III Addl. District & Sessions Judge (FTC), Kadapa at Rajampet. Miscellaneous petitions, if any pending in this appeal shall stand closed.

DR.SIVA SANKARA RAO, J

J.UMA DEVI, J

DATED: 23-12-2017.

Hsd

