

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

AND

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.512 OF 2012

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

1. This Criminal Appeal, under Section 374(2) of Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') is filed by the appellant/accused challenging the judgment dated 16-06-2011 passed in Sessions Case No.30 of 2011 by the Sessions Judge, Mahila Court, Visakhapatnam (for short, 'the trial Court'), whereby the appellant was convicted under Section 235(2) of Cr.P.C and sentenced him to undergo life imprisonment and also to pay a fine of Rs.5,000/-, in default, to suffer simple imprisonment for one year, for the offence under Section 302 of the Indian Penal Code, 1860 (for short, 'I.P.C.').

2. Heard Smt.B.Vasantha Lakshmi, learned counsel for the appellant/accused, and the learned Public Prosecutor (A.P.), appearing for the respondent-State, and perused the record.

3. The parties hereinafter will be referred to as arrayed before the trial Court.

4. The case of the prosecution, in brief, is P.W.7, P.Narayana Rao, Inspector of Police, Malkapuram Law and Order police station, Visakhapatnam, laid charge against the accused alleging that Dunna Kavya P.W.1 is the daughter of accused and Dunna Appalakonda @ Aruna (hereinafter referred to as 'the deceased'); accused and

deceased got married 20 years ago and they begot two children *i.e.*, Dunna Kavya P.W.1 and Dunna Kranthi (L.W.2), son of the accused; accused and deceased are native of Vajrapukothuru, Srikakulam district; 1 year prior to the incident, the accused along with his family members came to Visakhapatnam and resided at Gnanapuram for some time and thereafter shifted to Kobbarithota and since 4 months prior to the incident, started residing in a rented house of M.Ananda Prabhakara Rao P.W.2 at Venkannapalem, Malkapuram, Visakhapatnam; the accused who used to live by doing electrical decoration works, got addicted to bad vices, frequently used to quarrel with the deceased by suspecting her fidelity and absent himself from the house for some time and return to the house in the night and used to make nuisance; due to financial problems, P.W.1 intending to do some job at Hyderabad, contacted her friend V.Sireesha L.W.7 and on 05.09.2010 when the deceased, Kavya P.W.1, Kranthi L.W.2 and Sireesha L.W.7 are in the house, accused came to the house but was not allowed into the house and hence stayed outside on 05.09.2001, thereafter, he entered into the house, on 06.09.2010 when Kavya P.W.1 along with Sireesha L.W.7 while leaving to Hyderabad gave mobile No.8008599427 of Sireesha to the accused and asked him to contact if necessary; thereupon, on 07.09.2010 at 08:30 a.m. when Kavya P.W.1 and Sireesha L.W.7 got down at Hyderabad and contacted the mobile No.7842476479 of deceased, it was switched off and later when contacted B.Bhagyalakshmi, L.W.8, who is her neighbour, there was no reply and at 02:00 p.m. when she again contacted the mobile number of

deceased, her father lifted the mobile and stated that he killed her mother by tightening her neck with electric iron box wire and also informed that he left the house by locking; thereafter, Kavya P.W.1 contacted her brother L.W.2, who is at the house of her grand parents, and informed him, the information given to her by her father/ accused and on 08.09.2010 Kavya P.W.1 and Sireesha L.W.7 returned to Hyderabad by Janmabhoomi express and reached Visakhapatnam at 06:55 p.m. and went to the rented house and noticed the doors of the house were opened and Police were present, noticed the dead body of her mother inside the house, emitting bad smell, and on 08.09.2010 P.W.7, Inspector of Police, received a report from M.Ananda Prabhakara Rao P.W.2 regarding foul smell emanating from the locked rented house of the accused and P.W.7 made entry in the general diary, went to Venkannapalem and secured Ch.Srinivasa Rao P.W.3 and N.Mahalakshmi P.W.4, mediators, and broke open the house and found the dead body as that of Dunna Appalakonda @ Aruna and prepared mediators report in their presence. On arrival P.W.1 lodged Ex.P-1 report, stating that her father killed her mother with electric iron box wire, P.W.7 registered the same as a case in Crime No.282 of 2010 under Section 302 I.P.C. and sent the express F.I.R. copies to all the concerned; during the course of investigation, P.W.7 visited the scene of offence, examined the scene of offence panchanama in the presence of P.Ws.3 and 4, got photographed the same with the help of Ch.Srinivasa Rao, L.W.15, and video graphed by G.Karunaji P.W.5 and secured the presence of Kavya P.W.1, Kranthi,

M.Ananda Prabhakara Rao P.W.2, B.Bandamma, B.Appalaraju, B.Narsingu, V.Sireesha, B.Bhagyalakshmi and held inquest over the dead body of deceased in the presence of K.Venkata Subramanya Vara Prasad Rao, P.W.8, V.R.O. west division, Visakhapatnam Urban, seized material objects and sent the corps for conducting autopsy; P.W.7 arrested the accused on 10.09.2010 at 15:30 hours, who was produced by P.W.8, recorded the confession statement of the accused in the presence of P.Ws.4 and 8 under the cover of mediators report and basing on the confession statement of the accused, seized electric iron box along with wire used by the accused in the commission of offence under the cover of mediators report, thereafter P.W.7 sent the accused for remand and after receipt of post-mortem certificate, completed investigation and filed charge sheet.

5. The learned III Additional Chief Metropolitan Magistrate, Gajuwaka, took cognizance of the offence under Section 302 I.P.C., registered the charge sheet as P.R.C. No.2 of 2011 and committed the case to the Principal Sessions Court, Visakhapatnam, and the same was made over to the trial Court, for disposal, according to law.

6. On appearance of the accused before the trial Court, charge for the offence under Section 302 I.P.C. was framed against him, read over and explained to him in telugu, for which he pleaded not guilty and claimed to be tried. During trial, the prosecution examined P.Ws.1 to 8, marked Exs.P.1 to P.27 and M.O.1. After closure of

evidence of the prosecution, the accused was examined under Section 313 Cr.P.C. when explained the incriminating material appearing against him, he pleaded not guilty but did not examine any witnesses to defend his case before the trial Court.

7. On appreciation of the oral and documentary evidence, the trial Court held that the prosecution proved the guilt of the accused of the charge under Section 302 I.P.C., convicted and sentenced him as stated hereinabove. Challenging the said conviction and sentence, the appellant-accused preferred the present appeal.

8. Learned counsel for the appellant/accused would submit that the findings of the Court below are contrary to law and facts of the case and against all probabilities. The learned Sessions Judge failed to see that there is no cogent and convincing evidence on record to prove the guilt of the accused for the offence under Section 302 I.P.C. There are several inconsistencies in the evidence of P.W.1, which are not inspiring confidence and they are full of suspicion. The mobile number of the deceased is not established; the other prosecution witnesses are hearsay witnesses; there is no direct evidence to convict the accused for the alleged offence; recovery of material object *i.e.*, M.O.1. is not established as required under Section 27 of the Indian Evidence Act, 1872; it is mentioned in Ex.P-1 report lodged with the Police that one B.Bhagyalakshmi, neighbour, saw the deceased on 07.09.2010 at 11:00 hours. As per the alleged confession made by the accused, the deceased is his wife, was done to death in the morning on 06.09.2010; at that time

P.W.1 was very much present at his house, which is evident from the chief-examination of P.W.1 and submitted that at least the trial Court could have given the benefit of doubt and ultimately prayed to acquit the accused of the charge under Section 302 I.P.C. by setting-aside the conviction and sentence recorded against him.

9. On the other hand, learned Additional Public Prosecutor (A.P.) appearing for the respondent-State would contend that P.W.1 is the daughter of accused and deceased and there is no reason to discard the testimony of P.W.1. The evidence of P.W.1 is corroborated by P.W.2, who is the owner of the rented house of the accused and deceased; there are no inconsistencies, developments or contradictions in the evidence of prosecution witnesses; the accused has confessed the commission of offence to P.W.8; P.W.8 recorded the same under Ex.P-25, the accused committed the murder of his wife by strangulation. There is medical evidence and confession statement of the accused on record; the trial Court has rightly convicted and sentenced the accused of the charge framed against him for the offence under Section 302 I.P.C. The findings of the trial Court are based on evidence and record and there is nothing to take a different view and ultimately prayed to dismiss the Appeal confirming the impugned judgment.

10. In view of the contentions put forth by both sides, the following **points** have come up for determination:

- 1. Whether the appellant/accused caused the death of Dunna Appalakonda @ Aruna (deceased)?**
- 2. Whether the prosecution proved the guilt of the accused for the offence under Section 302 I.P.C.?**
- 3. Whether the conviction and sentence recorded against the appellant/accused is sustainable?**

11. **POINT Nos.1 to 3:** In view of the submissions made by both sides, it is appropriate to place the evidence on record. The evidence of P.W.1 Dunna Kavya, reveals that the accused is her father and the deceased is her mother; P.W.2 is the owner of their rented house; she studied up to Intermediate; she was living in the rented house of P.W.2 along with her father, mother and brother, who was studying 10th class. 2 years prior to her deposition, they came to Venkannapalem, Malkapuram for livelihood, used to live in the house of P.W.2 on rent. On 06.09.2010 her father murdered her mother; during the life time of her mother, her father used to suspect the fidelity of her mother, quarrel with her mother for no reason, her mother, younger brother and this P.W.1 also, many times; her father used to consume alcohol and under the influence of alcohol used to suspect the fidelity of her mother and beat her; used to come to house in the midnight and for no reason used to beat them under the influence of alcohol. On 05.09.2010 in the morning at 05:00 a.m. her father came to their house, when she was there in the house along with her mother (deceased), brother (L.W.2) and her friend Sireesha, L.W.7, knocked the door, made gallata, on which P.W.2, owner of the

house came and asked them to vacate the house; due to fear they did not open the door on that day, then her father/accused stayed outside the house for the entire day. On 06.09.2010 in the morning time when she opened the door, her father forcibly entered into their room he was under the influence of alcohol then they advised her father to take rest and sleep in a room. The accused slept in a room of their house. Thereafter, she along with her friend Sireesha, L.W.7 in the morning went to Hyderabad giving mobile No.8008599427 belonging to Sireesha to her mother and father. On the next day morning they got down at Hyderabad at 08:30 a.m. and when she contacted the mobile No.7842473156, it was switched off; thereafter, she contacted B.Bhagyalakshmi, L.W.8, who is her neighbour, at 11:30 a.m., there was no reply. In the night time, on the same day her father telephoned her and informed that he killed her mother with the help of electric iron box wire by tightening it around her mother's neck. She did not believe the version of her father at first and contacted her brother, L.W.2, who was at the house of her grand mother, her brother informed her that her mother went to another village; suspecting the version of her father, on 08.09.2010 she returned to Visakhapatnam by train at 07:30 P.M. When she was in train at 08:30 a.m. her father again telephoned her and informed that he killed her mother and kept her dead body in the kitchen room and locked the door and went away from that room. Immediately, she informed the same to her grand mother to find out the situation; her grand mother and maternal uncle went to Malkapuram, found the house of the deceased locked; thereafter, the doors of the house

were break open, her mother's dead body was found in the kitchen room. She lodged a report under Ex.P-1 with the Police. She also deposed that the Police conducted inquest panchanama *etc.*, over the dead body of her mother. In cross-examination she has reiterated the same; she denied that one person who was a contractor residing at Gajuwaka used to visit their house to meet her mother. She also denied that her father did not telephone and inform that the death was caused by him and denied the suggestions that she was deposing false.

12. The evidence of M.Ananda Prabhakara Rao P.W.2 reveals that he is the owner of the rented house where P.W.1 and her parents were residing. He also deposed that he knew PW.1; in the month of April, 2010 he let out one ground portion of the house to the accused on rent. He also stated that the accused occupied the house and residing with his wife and children; there were quarrels between the accused and his wife Dunna Appalakonda @ Aruna (deceased). The accused used to come to house late in the night in a drunken stage and quarrelled with his wife and children; when he enquired, the accused informed him that the character of his wife is not good, then he chastised the accused not to consume alcohol. There was also specific evidence of P.W.2 that on 05.09.2010 midnight the accused came to the house and quarrelled with his wife and children; the accused kicked the doors and windows made serious galata and nuisance then he warned the accused to vacate the house; the wife of the accused requested a week's time to

vacate the house; then he chastised the accused and the accused accordingly went away. On 06.09.2010 early in the morning he found the accused sleeping in front of his house. When P.W.1 came to fetch water from tap, informed him that the accused high-handedly pushed them, opened the door and slept in the house; thereafter, P.W.1 went to her house. There is also evidence of P.W.2 that on 08.09.2010, P.W.1 informed him through telephone stating that her father murdered her mother and asked him to verify. P.W.1 also stated to him that the accused himself telephoned her on 07.09.2010 and informed that he murdered her mother. Thereafter, on 08.09.2010 evening he verified the house of the accused and found the doors locked; the relatives of the deceased, on the information given by P.W.1, arrived there; P.W.2 suspecting foul smell from the house of the accused lodged a report under Ex.P-2 to the police. Ex.P-2 reveals the foul smell emanating from the house of the accused. In cross-examination he reiterated the same and specifically stated that he never saw any stranger coming to the house of the accused to meet the deceased and he denied that he was deposing false.

13. Ch.Srinivasa Rao P.W.3, and N.Mahalakshmi P.W.4 deposed about the conduct of inquest panchanama over the dead body of the deceased; stated that they have signed the observation panchanama. Ex.P-4 is the observation report, Ex.P-6 is inquest dated 09.09.2010 corroborates with the evidence of P.Ws.3 and 4. As per these documents, the dead body is found in the kitchen room

of the house of the accused. Both of them denied that the documents were prepared at police station. These documents corroborate with the evidence of P.Ws.1 and 2 with regard to finding of the dead body. Nothing is suggested to these witnesses that they were deposing false.

14. As per the evidence of P.W.4 the police recorded the confession of the accused in her presence and Police seized electric iron box containing long wire under a seizure panchanama; she put her signature thereon. Ex.P-9 is her signature on seizure report. M.O.1 is the electric iron box containing long wire.

15. Golukonda Karunaji P.W.5 deposed about taking photographs of the scene and the photos are marked as Exs.P-10 to P.17.

16. Dr.V.Chandra Shekar P.W.6, who conducted autopsy over the dead body of the deceased, deposed that on 09.09.2010 at 12:50 p.m. he commenced autopsy over the dead body of Dunna Appalakonda @ Aruna and concluded the same at 01:40 p.m. and he found the following *ante moertem* injuries during his examination:

- 1) a faint pale brown, well defined, non-patterned horizontal ligature mark 40 c.m. varying width 1.5 to 2 c.ms on and below the thyroid cartilage level of neck;
- 2) skin of ligature mark partly adhort and partly p.m. loosen backutar neck right noted;

- 3) starting from a point on front midline neck 5 c.m. below the central chin and 6 c.m. above the suprasternal notch;
- 4) the ligature mark on right front neck 10 c.m. to a point 6 c.m. below the lower border right ear and further extend back neck 20 c.m. to a point 6 c.m. below the lower border left ear and 10 c.m. on left front neck continued with right front neck ligature mark;
- 5) on dissection of ligature mark the subcutaneous tissue pale, hard and the underlying tissues, muscles congested, ecchymosis edges ligature mark noted contusions underlying the ligature mark tissues noted.
- 6) hyoid bone intact normal;
- 7) the thyroid cricoid laryngeal cartilage tracheal rings normal to condition noted.

17. P.W.6 further opined that the cause of death was due to ligature strangulation. Ex.P-19 is the post-mortem examination certificate; Ex.P-18 is the requisition for post-mortem examination; Ex.P-20 is the chemical analysts opinion dated 15.12.2010; Ex.P-21 is the final opinion dated 23.12.2010. No cross-examination was conducted to the doctor. There is no reason for the doctor to give a false certificates and false opinion as deposedl above. There are number of ligature marks as indicated above. There is clear material evidence with regard to strangulation to death and such strangulation is possible with wire of the electric iron box marked as

M.O.1. Therefore, it cannot be said that the death in the case is not homicidal. The only point is that whether the accused caused the death in question?

18. There is evidence of P.W.8 K.V.S.V.Prasada Rao, V.R.O. of west division, Visakhapatnam, who stated that on 10.09.2010 at about 12:00 noon, the accused surrendered before him and gave a statement as mentioned in Ex.P-25; wherein the accused confessed about the commission of murder of his wife. In this case the defence is that the accused did not make such confession. As per Ex.P-25 the accused specifically mentioned that he suspected the fidelity of his wife and strangled her to death with an electric iron box wire. There is also specific mention that he reached the house on 05.09.2010 and slept in the veranda. On the next day *i.e.*, on 06.09.2010 at 07:00 a.m. he forcibly entered into the house, asked his daughter whether any person came to their house then she told her that none came, her friend Sireesha L.W.7 was there. Thereafter, his daughter along with Sireesha, went to Hyderabad to attend a job and gave the mobile No.8008599427 of Sireesha; after departure of her daughter, his son Kranthi, L.W.2 went to school, then his wife asked him to leave the house he became angry, took electric iron box wire and went to her back side, from kitchen and from backside pulled his wife's neck with wire tightly and his wife died. Thereafter he took his wife to a side; thereafter went to the house of Danamma, who is her maternal aunt, residing at Palasa and told her the incident, she scolded him. On next day *i.e.*, on

07.09.2010 he informed the same to P.W.1 over phone that he killed her mother and going to surrender before the Police. On 08.09.2010 he went to the house of his brother Suryanarayana at Bommali, Rajahmundry, took his mother and told them about the incident. If he surrenders before the Police the Police would beat him so he reached P.W.8. All the circumstances narrated under Ex.P-25 are clearly spoken by P.Ws.1 and 2 also.

19. P.W.7 is the Inspector of Police, who conducted investigation in this case, clearly and categorically deposed about registration of case against the accused for the offence under Section 302 I.P.C. relying on Ex.P-1 report, conducted scene of offence panchanama, inquest panchanama and sending the dead body of deceased to the Government Hospital, Visakhapatnam. Admittedly, there are no direct witnesses to the alleged offence; the whole case of the prosecution is based on the circumstantial evidence, confession made by the accused and also other circumstances. Under these circumstances, it is apt to refer the decision of the Hon'ble Apex Court in ***Sharad Birdhichand Sarda Vs. State of Maharashtra***¹, wherein it was held as hereunder:

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

- (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (ii) those circumstances should be of definite tendency unerringly pointing towards guilt of the accused;

¹ AIR 1984 SC 1622

- (iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
- (iv) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

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

1. Hanumant Govind Nargundkar Vs. State of M.P.:

AIR 1952 SC 3442.

2. C.Chenga Reddy Vs. State of A.P.:

(1996) 10 SCC 193."

20. When the accused was examined under Section 313 of Cr.P.C. examination after closure of the prosecution evidence, he simply denied the evidence of prosecution witnesses did not adduce any evidence on his side. The specific contention of the accused is that he was not at his house on 05.09.2010 and also at the time of death of the deceased. P.W.1, daughter of the accused, had clearly and categorically deposed about the vices of the accused, accused suspecting the fidelity of her mother and beating her. There is clear evidence of P.W.1 that her father was very much present at her house on 05.09.2010 and 06.09.2010, when her father was sleeping at their house she left for Hyderabad on 06.09.2010. There is also the evidence of P.W.1 that on the night of 07.09.2010 her father telephoned and told her that he killed her mother with the help of electric iron box wire by tightening the wire around the neck of her

mother. She did not believe the same and contacted her brother Kranthi and other members and enquired about the incident. On 08.09.2010 morning she started to Visakhapatnam from Hyderabad to reach her house, when she was in the train around 08:30 a.m. on that day again her father telephoned and informed her that he killed her mother and kept the dead body in the kitchen room, locked the door and went away. P.W.2 also corroborated that he was informed by P.W.1 about the accused committing murder of his wife, keeping the dead body in the kitchen room of the house, locking it and going away. Under Ex.P-1 report the same is specifically mentioned; there is also mention in Ex.P-1 that when P.W.1 asked her father why he was speaking like that he told her that he was stating the truth, the same is also found under Ex.P-25 statement recorded by P.W.8. There is evidence of P.Ws.1 and 2, which is cogent, consistent and corroborated with Ex.P-1 report. There is also specific evidence of P.W.2 that the accused was at his house on 05.09.2010 and 06.09.2010, though P.Ws.1 and 2 were examined at length nothing is brought on record to discard their testimony. P.W.1 is the daughter and P.W.2 is the house owner. There is no reason for them to create false story and implicate the accused for the death of his wife.

21. When the entire incriminating evidence appearing against the accused is put to him under Section 313 Cr.P.C., he simply denied the same and stated false. Though the accused stated that he was not at the house on the fateful day, he did not explain where he was

and what he was doing on that day. The accused did not lead any rebuttal evidence. As per Section 106 of the Indian Evidence Act, 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."

22. In ***State of M.P. Vs. Ratan Lal***², the Hon'ble Apex 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.

23. Admittedly, extra judicial confession is a weak piece of evidence. The point is that whether the evidence of P.W.8 can be safely acted upon. P.W.8 in whose presence the accused made confession of commission of murder of his wife is a Village Revenue Officer. P.W.8 has no authority or any kind of control over the accused. P.W.8 also not aware of the facts and circumstances of

² AIR 1994 SC 458

the case and he would not gain anything by supporting the prosecution case. P.W.8 directly or indirectly would not get any benefit in deposing against the accused; no reason is suggested to P.W.8 to support the prosecution case simply, it was suggested that the accused did not make any confession as mentioned in Ex.P.25. Ex.P-25 corroborates with the facts and circumstances of the case.

It is not the case of the appellant/accused that he was not in fit state of mind nor the said confession was obtained by any inducement, threat or promise by P.W.8 with reference to the charge under Sections 302 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 accused in any disadvantageous position. There are no justifiable reasons to discard the extra judicial confession made by the accused Ex.P-25. It can safely be held that the confession made by accused as free man without the involvement of police or any other agency, which goes against him. There is also evidence of P.W.1 and P.W.2 corroborating the contents of Ex.P.25. Therefore, it cannot be said that the accused did not confess the commission of the offence to P.W.8 and the contents of Ex.P.25 are false. There is nothing to disbelieve this evidence. The said evidence can be safely acted upon.

24. As per the medical evidence on record the death of deceased was caused two or three days prior to the post-mortem examination, the post-mortem examination was commenced at 12:50 p.m. on

09.09.2010 and closed at 01:40 p.m. on some day. So the death was caused on 6/7-09-2010. The presence of the accused on 05.09.2010 and 06.09.2010 is established by examining P.W.1 and P.W.2. The accused confessed the causing the death on 06.09.2010 to P.W.1. Therefore, it can be safely concluded that the death in this case was caused on 06.09.2010. The contention of the accused that there are material discrepancies in the evidence of P.W.1 and other witnesses is absolutely false.

25. The submission of learned counsel for the appellant/accused is that there is specific mention in Ex.P-1 report that when P.W.1 spoke to one B.Bhagyalakshmi-L.W.8, who informed her that she saw her mother on 07.09.2010 at 11:00 hours. As per the confession made by the accused to P.W.1 and P.W.8 the death was caused on 06.09.2010. B.Bhagyalakshmi though cited as L.W.8, the prosecution did not examine her, the accused did not summon her and examined. There is every possibility of B.Bhagyalakshmi making such statement without actually seeing the deceased. This inconsistency is not fatal to the case of prosecution. It is also submitted on behalf of the accused that as per the Ex.P-1 report lodged by P.W.1 it is stated that she left to Hyderabad on 06.09.2010 in the evening at 04:30 p.m. but in her evidence P.W.1 stated that she left to Hyderabad on 06.09.2010 in the morning hours. As per the evidence of P.W.1 she reached Hyderabad on the next day morning *i.e.*, on 07.09.2010 at 08:30 a.m. from Visakhapatnam to Hyderabad it takes not less than 11 hours to

travel by train. The death in this case is caused after P.W.1 leaving her house to Hyderabad along with her friend-Sirisha. It is not a material contradiction to disbelieve prosecution case. In the facts and circumstances of the case, as there is clear confession of the accused with regard to commission of the offence, there is no possibility for any person to enter into the house of accused and cause death of deceased. The presence of the accused along with the deceased is established by the prosecution by examining P.Ws.1 and 2 and also through other evidence on record. The contention of the accused that he was not there along with the deceased by that time is a false contention only it was taken to defend his case. There is no reason for the Police to falsely implicate the accused in a case of this nature. There is also no reason for P.W.1 to leave the real culprit and falsely depose against the accused who is none other than his father.

26. The prosecution also proved the motive for the commission of the offence in this case i.e., accused was suspecting the fidelity of deceased and repeatedly assaulting her and ultimately caused her death. There is ample evidence on record to prove the death in this case is homicidal. Though there are no direct witnesses to the alleged offence, the circumstances placed on record taken cumulatively form the complete chain and there is no escape from the conclusion that, in all human probability, the death of the deceased was caused by the appellant/accused and none else. The evidence adduced by the prosecution is consistent, cogent and

reliable unerringly pointing towards the guilty of the accused and it is not inconsistent with his innocence. The circumstantial evidence as well as the confession made by the accused makes amply clear to sustain a conviction for the offence under Section 302 I.P.C.

27. The prosecution has proved beyond all reasonable doubt that the accused suspecting the fidelity of his wife strangled her with M.O.1 electric iron box wire. No other conclusion is possible. The trial Court basing on the evidence on record had rightly convicted and sentenced the accused for the offence under Section 302 I.P.C.

28. In the result, the Criminal Appeal is dismissed and the conviction and sentence recorded against the appellant/accused by the trial Court in Sessions Case No.30 of 2011, *vide* judgment dated 16.06.2011, is confirmed.

29. A perusal of the record shows that by order dated 27.12.2016 in Crl.A.M.P. No.2154 of 2016, this Court granted bail to the appellant-accused following the order of this Court dated 02.11.2016 in ***Batchu Ranga Rao and others Vs. State of Andhra Pradesh., rep. by its Public Prosecutor***³. Therefore, the accused, who is not present today in the Court, shall surrender himself before the Superintendent, Central Prison, Visakhapatnam to serve the remaining sentence. In default, the trial Court shall take appropriate steps against the accused to execute the impugned judgment.

³ (Crl.A.M.P. No.1687 of 2016 in Crl.A. No.607 of 2011)

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

A.RAJASHEKER REDDY, J

Dr. SHAMEEM AKTHER, J

Date: 28-10-2017.
DSH



HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

AND

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

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CRIMINAL APPEAL No.512 OF 2012

(Judgment of the Division Bench delivered by
Hon'ble Dr. Justice Shameem Akther)

Date. 28-10-2017

DSH